

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

In re

Compliance with U.S. Citizenship
Requirements of DHL Airways, Inc.

Third-Party Complaint of
Federal Express

Docket OST-2002-13590

Petition of

UNITED PARCEL SERVICE CO.
(DHL Airways, Inc.)

Docket OST-2002-13089

ANSWER OF DHL AIRWAYS TO MOTIONS OF LYNDEN AIR CARGO

Communications with respect to this document should be sent to:

Steven A. Rossum
Senior Vice President - Corporate
Finance & General Counsel
DHL AIRWAYS, INC.
P.O. Box 66633
Chicago, IL 60666-0633
(847) 842-6313
(847) 842-6303 (fax)
srossum@dhlairways.com

Stephen H. Lachter
LACHTER & CLEMENTS LLP
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 862-4321
(202) 835-3219 (fax)
lachter@starpower.net

COUNSEL FOR DHL AIRWAYS, INC.

December 4, 2002

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
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ANSWER OF DHL AIRWAYS TO MOTIONS OF LYNDEN AIR CARGO

Pursuant to Rule 405(a) of the Department's Rules of Practice, 14 CFR § 302.405(a), DHL Airways, Inc. ("Airways") Answers the Motions of Lynden Air Cargo, LLC ("Lynden") to Join "Complaints" in the captioned dockets.¹

¹ On November 12, 2002, the Assistant General Counsel granted an extension of time pursuant to 14 CFR § 302.405(a) until December 5, 2002 for Airways to file an Answer to the Motion of Lynden to Join the Third-Party Complaint of Federal Express Corporation in Docket OST-2002-13590. Airways also will use this opportunity to file an Answer to the identical document filed by Lynden in Docket OST-2002-13089, seeking to join the pending United Parcel Service "complaint" against Airways. To the extent necessary, Airways respectfully requests leave to answer the duplicative Lynden Motion in the latter docket.

INTRODUCTION

On November 5, 2002, Lynden filed a Motion to Join the Third-Party Complaint of Federal Express Corporation ("Federal Express") in Docket OST-2002-13590. In that docket, Federal Express seeks the institution of an enforcement proceeding to review "the ownership and control" of Airways " . . .and its compliance with U.S. law." Airways filed an Answer to the Complaint on November 8, 2002.

Also on November 8, 2002, Lynden filed a Motion for Leave to File together with a Motion to Join the Complaint filed by United Parcel Service Co. ("UPS") in Docket OST-2002-13089, a proceeding in which the Department consolidated "for administrative convenience" filings by Federal Express and UPS seeking "relief with regard to various issues involving the citizenship of DHL Airways." Airways filed an Answer to the original filings consolidated in that docket on September 6, 2002 and a number of additional responsive filings have subsequently been filed in the docket by the complainants and Airways.

SUMMARY

Airways does not oppose the joinder of complaints sought by Lynden, preferring instead to respond to the substance of the Lynden pleadings. In both cases, the Lynden documents fail to add any facts or arguments to support the complaints already on file or to support the grant of any relief to Lynden. Lynden offers no independent evidence, or even assertions, concerning the citizenship and/or continuing fitness of Airways. Indeed, as already amply documented in Airways' responsive pleadings in

both dockets, which are incorporated by reference here to avoid repetition, the complaints are wholly without substance and should be dismissed.

LYNDEN'S CONTRACT CLAIMS ARE IRRELEVANT

Lynden's sole "complaint" – that it lost out to Airways on a proposal to provide cargo lift for the U.S. military under a contract awarded by the Air Mobility Command ("AMC") – is nothing more than a misplaced attempt to overturn the results of a validly awarded procurement contract, using erroneous facts and irrelevant arguments. Lynden apparently believes that the environment created by the continuous campaign of harassment against Airways being pursued by Federal Express and UPS for previously identified anti-competitive purposes, may afford it an "opportunity" to overturn the AMC contract by repeating the unfounded assertions of Federal Express and UPS that Airways is not a U.S. citizen.

However, as the Department is well aware, Airways is a U.S. air carrier, with U.S. citizen ownership, directors and management, with U.S. employees (in Airways' case, including ALPA pilots), operating U.S. registered aircraft under the regulatory oversight of the FAA, as is the case of all U.S. air carriers. Like Lynden, Airways is "subject to . . . U.S. taxes, labor rules, and other regulations." The only "advantage" Airways had in the bidding competition for U.S. military transportation was that AMC concluded that Airways made a better proposal.

The suggestion that Airways is a "foreign carrier" established in a "tax haven" operating under less "stringent labor rules" is a total fiction, as is the suggestion by

Lynden that “[it] has reason to believe that DHL Airways intends to use an aircraft currently operating within Europe under the control and authority of DHL International. . .under some arrangement that may appear to meet the conditions of the AMC contract (which requires this work be done by a U.S. carrier).”

The simple fact is that Airways was chosen by AMC in a fair and open procurement process based upon efficiencies and benefits to the U.S. military that arise from replacing Lynden’s Hercules aircraft with larger, more efficient A-300 freighter equipment, resulting in cost savings and increased capacity to the U.S. military operating from Europe over routings within Europe and to the Middle East. In November 2002, Airways acquired a U.S. registered aircraft from an unaffiliated U.S. air carrier to meet the AMC’s service requirements. Airways will use its own U.S. crews, operate under standard U.S. regulations and in all respects conform to the requirements of the AMC proposal. The fatuous suggestion that Airways’ contractual commitment to operate charter services for the DHL Worldwide Express Network in the United States somehow disqualifies Airways from bidding for AMC contracts because “Airways is giving control to a foreign company while effectively evading U.S. taxes” is plainly wrong, perhaps libelous, and certainly at odds with all relevant facts.

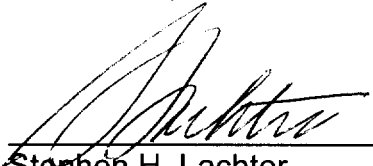
In its contract proposal, Airways offered the U.S. military a competitive alternative to Lynden, owing to its operation of wide-bodied aircraft that could accommodate additional non-contoured military pallets, adding two positions and up to 20 additional tons of cargo capacity per flight. In any event, the details of the AMC’s procurement process are irrelevant to the issues raised in either the Federal Express or UPS

complaints which, independently, have no merit. If Lynden honestly believes that Airways' offer in response to the AMC solicitation is non-responsive or otherwise should be disqualified, the proper forum in which to resolve that issue is in a bid protest filed with the AMC, not through a complaint filed with the Department.

The challenge by Lynden to Airways' citizenship in these dockets is particularly ironic since the complaints it seeks to join argue that Airways is improperly under the control of foreign entities because Airways currently operates a majority of its services for one customer. Here, Lynden complains about Airways' citizenship because Airways is broadening the scope of the third parties it serves, in this case the U.S. military.

In short, the Lynden pleadings are devoid of merit and seek to misuse the Department's regulatory process to overturn a procurement decision by the U.S. military. The Lynden complaints, like the complaints it seeks to join, should be dismissed summarily.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen H. Lachter", is written over a horizontal line.

Stephen H. Lachter

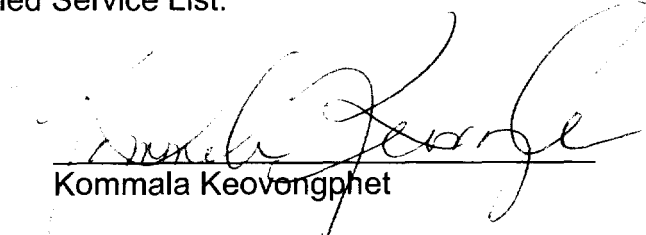
LACHTER & CLEMENTS LLP

COUNSEL FOR DHL AIRWAYS, INC.

December 4, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Answer of DHL Airways to Motions of Lynden Air Cargo this 4th day of December, 2002 by first class mail, postage prepaid to all persons on the attached Service List.



Kommala Keovongphet

SERVICE LIST

Samuel Podberesky
Asst General Counsel for Aviation
Enforcement & Proceedings
U.S. Department of Transportation
400 7th Street, SW, C-70, Rm 4116
Washington, DC 20590

Steven R. Okun
UNITED PARCEL SERVICE CO.
316 Pennsylvania Avenue, SE
Suite 304
Washington, DC 20003

Patrick Murphy
Mark Gerchick
Gerchick-Murphy & Associates
1134 19th Street, NW
Washington, DC 20007

P. Charles Altimari
Daniel N. Tenfelde
UNITED PARCEL SERVICE CO.
1400 No. Hurstbourne Parkway
Louisville, KY 40223

Fred F. Fielding
Edwin O. Bailey
Wiley, Rein & Fielding
1776 K Street, NW
Washington, DC 20006

Donald H. Horn
Asst General Counsel
for International Law
US Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

Bruce H. Rabinovitz
WILMER CUTLER & PICKERING
2445 M Street, NW
Washington, DC 20037-1420

David L. Vaughan
Michael J. Francesconi
KELLEY DRYE & WARREN LLP
1200 19th Street, NW, Suite 500
Washington, DC 20036

The Hon. Rosalind A. Knapp
Deputy General Counsel
U.S. Department of Transportation
400 Seventh Street, SW, C-2, Rm 10428
Washington, DC 20590

Paul M. Geier
Assistant General Counsel for
Litigation
U.S. Dept of Transportation
400 7th Street, SW, C-30, Rm 4102
Washington, DC 20590

Patricia L. Thomas
Chief of the Air Carrier Fitness Division
US Department of Transportation
400 Seventh Street, SW, X-50
Washington, DC 20590

M. Rush O'Keefe, Jr., VP Reg. Affairs
Sarah S. Prosser, Managing Director
Thomas F. Donaldson, Jr., Sr. Atty
Federal Express Corporation
3620 Hacks Cross Building B-3d Fl.
Memphis, TN 38125

Susan McDermott
Deputy Asst Secretary for Aviation
and International Affairs
US Department of Transportation
400 Seventh Street, SW
Washington, DC 20590

The Honorable Kirk Van Tine
General Counsel
US Department of Transportation
400 Seventh Street, SW, Rm 10428
Washington, DC 20590

Earl A. Boyanton, Jr.
Asst Deputy Under Secretary for Asst
Defense for Transportation Policy
Department of Defense
3500 Defense Pentagon, Rm 3E114
Washington, DC 20301-3500

Hon. Read van de Water
Secretary for Aviation &
International Affairs
Department of Transportation
400 Seventh Street, SW, Rm 10232
Washington, DC 20590

Michael Hart
President
Lynden Air Cargo, LLC
6441 So. Airpark Place
Anchorage, AK 99502

Pierre Murphy
Law Offices of Pierre Murphy
1201 Connecticut Avenue, NW
Suite 550
Washington, DC 20036